fact might be established could possibly be needed. Admitting, however, that the language is capable of this construction, the change is one of form merely and the practical result remains the same. The sole issue should be whether the person alleging insanity was capable of understanding the contractual act. In determining that question it is by no means apparent how the knowledge of one party affords, as is contended, a test which is both absolute and practically unerring. Applied to the case of contracts made by insane persons who are to all appearances sane, or to agreements entered into by correspondence, this test fails entirely to aid in ascertaining the truth. The incapacity of the defendant to perform a contractual act remains the same, however ignorant of it the plaintiff may be. Nor is an inquiry into the mental condition of one person in the least aided by evidence as to the state of mind of another. When it is considered that the heavy burden of proving knowledge is upon the insane, the doctrine appears to be a return toward the harsh rule of the common law, that no man can "stultify himself" by pleading his own insanity.

Mr. Wilson's position finds little support among modern authorities. *Edwards* v. *Davenport*, 20 Fed. Rep. 756; *Seaver* v. *Phelps*, 11 Pick. (Mass.) 304. In the cases relied upon by the court in *Imperial Loan Co.* v. *Stone*, *supra*, the insane person had derived some benefit from the contract, and in such cases the law justly implies a contract to pay. *Baxter* v. *Earl of Portsmouth*, 5 B. & C. 170; *Molton* v. *Camroux*, L. R. 2 Ex. 487. Knowledge of insanity then becomes material as a defence since a remedy in its nature equitable should not be allowed to one open to the suspicion of having imposed upon an insane person. These decisions, however, offer no support for the sweeping rule contended for which makes no distinction between executed and executory contracts. The cases in the United States which seem at first sight to accord with Mr. Wilson's view will, upon examination, generally be found to fall within the class where the relief sought is in essence *quasi*-contractual. *Matthiessen, etc., Co.* v. *McMahon's Adm'r*, 38 N. J. Law 536.

CONDITIONAL PAYMENT BY CHECK. — The effect of a creditor's acceptance of a check sent expressly "in full satisfaction" of a larger claim has been the subject of some difference of opinion. The English courts leave it to the jury to decide whether the creditor accepted the check in final settlement or merely as a payment on account. *Day* v. *McLea*, 22 Q. B. D. 610. Numerous American decisions, on the contrary, hold as matter of law that acceptance of such a check discharges the entire claim. *Logan* v. *Davidson*, 18 N. Y. App. Div. 353. A brief discussion of the question appears in a recent article, in which, however, the author has done little more than to re-state the present English law. *Cheques in Settlement*, by G. Pitt-Lewis, 112 L. T. (London) 49, Nov. 16, 1901. In jurisdictions where a liquidated claim cannot be discharged by a smaller payment, either in *specie* or by check, the question obviously is confined to disputed claims. *Meyer* v. *Green*, 21 Ind. App. 138. But in all other jurisdictions it concerns both unliquidated and liquidated claims; for these jurisdictions either hold broadly that a smaller payment, whether in *specie* or by check, may operate in full satisfaction, or else, with the English courts, they concede that payment by check may have such effect, though payment in *specie* may not. *Clayton* v. *Clark*, 74 Miss. 499; *Sibree* v. *Tripp*, 15 M. & W. 23.

The English view, that the effect of acceptance is a question of fact for the jury, seems untenable. When a debtor makes a conditional payment by check, the creditor may honorably take one of three courses: he may accept the check in full discharge; he may passively retain it, without cashing or negotiating it; or he may return it. Unless he violate the express condition on which it was sent, he cannot apply it merely on account. He should either refrain from applying the check at all or conform to the terms imposed by the debtor; he cannot rightly substitute terms of his own. "The use of the check is *ipso facto* an acceptance of the condition." *Nassoiy* v. *Tomlinson*, 148 N. Y. 326.

On this view, the creditor's intention in accepting the check would seem immaterial, though the English law would regard it as decisive. For if he intended to accept on the terms offered, his claim is at an end; while if he did not so intend and yet cashed the check, it should not be open to him to qualify or explain an act consistent only with such intention. In particular instances it may well be a troublesome question whether the remittance was in fact conditional. But when once the condition is established, it should follow, not as a possible inference of fact, but as a necessary conclusion of law that acceptance of such remittance is subject to the condition attached.

PROVER AGAINST A PURCHASER FROM A CONVERTER. — There has been conspicuous lack of harmony in the decisions as to whether a pledgee or purchaser from a converter is himself guilty of a conversion before demand and refusal. The question assumes practical importance whenever action is brought before demand and also when, though demand has been made, the statutory time has elapsed since the fraudulent sale or pledge. The English law on the subject is briefly summarized in a recent article. *A Point in the Law of Conversion*, Anon., 46 Sol. J. 24 (Nov. 9, 1901).

As far back as Lord Ellenborough's time, in 1805, it was laid down unqualifiedly, though by way of *dictum*, that one who takes property "by assignment from another who has no authority to dispose of it" commits a conversion. *M'Combie* v. *Davies*, 6 East 538. On this view, which seems correct, there is an immediate conversion by the purchaser or pledgee, before demand and refusal, and it matters not whether his conduct is fraudulent or innocent. A later decision, however, qualifies the broad doctrine of *M'Combie* v. *Davies*, *supra*, holding that an innocent pledgee of title deeds is not guilty of a conversion until detention after demand. *Spackman* v. *Foster*, 11 Q. B. D. 99. The author submits, rightly, that the doctrine of *Spackman* v. *Foster*, *supra*, is indefensible on principle and unfortunate in its results. If the essence of conversion is the exercise of a dominion inconsistent with the rights of the owner, it is hard to see how demand and refusal can be necessary; or, if it is unnecessary in the case of a fraudulent pledgee or purchaser, how it can become necessary simply because the infringement on another's rights is unintentional. For whether one's motive be honest or fraudulent, by accepting the converted property in sale or pledge he does an act entirely at variance with the exclusive control of the owner. The view of *Spackman* v. *Foster*, *supra*, is doubtless due in part to a not unnatural desire to shield from immediate liability one whose conduct is morally blameless. But such assumed kindness operates in one respect to the disadvantage of its recipient. It fails to recognize the desirability of quieting possession. For if there is no conversion until demand and refusal, the statute of limitations cannot run in his favor till then; while the stricter and more logical doctrine would allow it to run from the outset.

The sounder view, namely, that demand is not necessary, represents perhaps the weight of American authority. *Riley* v. *Boston, etc., Co.*, 11 Cush. (Mass.) 11. See also CL. & L., TORTS, 2d ed., 214, and an excellent article, *Conversion by Purchase*, by Nathan Newmark, 15 Am. L. Rev. 363, 376–378. The opposite view, however, is strongly supported. *Rawley* v. *Brown*, 18 Hun (N. Y.) 456. See also 6 So. L. Rev., N. S., 822, 828.